IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 8945 of 2005

Between:

N.Appa Rao S/o.Polaiah
Sub Jail Grade II, Nellore Nellore District

..... PETITIONER

AND

1 The Inspector General of Prisons and Correctional Services

AP, Hyderabad.
2 The Dy.Inspector General of Prisons Rayalaseema Region,

Kadapa Kadapa District.
3 The Government of A.P.rep by its Prl.Secy, Home

Department, Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an order or direction more in the

nature of writ of certiorari calling for the records relating to the proceedings of the 2nd respondent bearing No.DIG(R)/OS/175/2003 dt.27.1.2003 as confirmed in proceedings of the 1st respondent bearing No.EA 4/298/2003 dt.4.11.2003 and further confirmed in the orders passed inO.A.No.7906/2003 dt.23.3.2005 on the file of the A. P. Administrative Tribunal, Hyderabad and set aside the same with all consequential benefits and consequently declare the impugned proceedings of the 2nd respondent bearing No.DIG (R)/OS/175/2003 dt.27.1.2003, and consequential orders of the 1st respondent bearing No.EA.4/298/2003 dt.4.11.2003 and also orders passed in O.A. No.7906/2003 dt.23.3.2005 on the file of the A.P. Administrative Tribunal, Hyderabad as illegal, arbitrary unconstitutional and discretionary being violative of Articles 14 and 16 of the constitution of India and further declare that the petitioner is entitled to be reinstated in service as Head Warder with all consequential benefits such as arrears of pay, seniority etc., and pass such other order or orders.

Counsel for the Petitioner:MR.B.RANGANADH RAO

Counsel for the Respondent No.: GP FOR SERVICES I

The Court made the following :

O R D E R (Per Hon'ble Sri Justice G.Bikshapathy,J)

This writ petition is filed calling in question the order of the A. P. Administrative Tribunal, Hyderabad in O.A.No.7906/2003 dated 23.3.2005. Petitioner is the applicant before the Tribunal.

2 . Petitioner was working as Grade-II Head Warder in Sub Jail, Chitoor. He applied for leave from 15.9.2000. But however, it appears that the leave was refused. When, he left the head quarters on 15.9.2000, an incident had taken place on 17.9.2000, wherein ten convicts escaped from the prison. However, the petitioner was placed under suspension on 19.9.2000 and thereafter, he was dismissed from service by dispensing with the departmental enquiry. The said dismissal came to be challenged before the Tribunal in O.A.No.6183/2000 and the learned Tribunal set aside the order of dismissal and directed the authorities to conduct regular enquiry. Accordingly, after conducting regular enquiry, the petitioner was again dismissed from service by order dated 27.1.2003 and the appeal filed by the petitioner to the competent authorities became futile and, the present O.A. filed before the Tribunal, also ended in dismissal on the ground that there were no procedural irregularities. Aggrieved by the same, the present writ petition is filed.

3. The learned counsel for the petitioner submits that the order of the Tribunal is not sustainable, inasmuch as the petitioner was not on duty as on the date of incident and in fact he went on leave from 15.9.2000 and he joined duty only on 19.9.2000 and, therefore, the

petitioner cannot be blamed for the incident which took place in his absence. He further submits that there are number of security arrangements in the jail and the concerned officers were manning the jail and under these circumstances, it cannot be said that the petitioner committed any misconduct. He stated that the Superintendent, Central Prisons, Visakhapatnam was appointed as Enquiry Officer and he examined some remand prisoners and the petitioner, apart from other departmental witnesses viz., Y.Emmanuel Dhanraj, Deputy Superintendent (P.W.1), Sri T.Krishna Rao, Head Warder (P.W.3), Sri C.S.Jyothiswar, Warder (P.W.4), Sri M.Srinivasulu, warder (P.W.5), Sri V.Thomas, Sri S.Samuel, Sri B.Armugam and held that the charges are proved and thereupon after furnishing the enquiry report, dismissed the petitioner from service. The learned counsel for the petitioner however submits that though there are no procedural lapses in the conduct of enquiry, yet the very charge that the petitioner connived with escaped prisoners is not established, inasmuch as he was not admittedly in the station on the date of the incident. He submits that even in the depositions of the witnesses who were examined in support of the department, there was no reference of the name of the petitioner and under these circumstances, it is totally non-application of mind and there is no evidence whatsoever to support the case of the department. He submits that this aspect was not considered by the Tribunal, before refusing to interfering with the order of the dismissal and, therefore, the order of dismissal is liable to be set aside.

4. On the other hand, the learned Government Pleader appearing for respondents submits that on the basis of evidence adduced on behalf of the department, it has been conclusively held by the

Enquiry Officer that the charge as framed, was proved and the Tribunal is not empowered to re-appreciate the evidence and come to a different conclusion than the one arrived at by the Enquiry Officer and moreover this court also cannot interfere under Article 226 of the Constitution of India. He submits that in departmental matters if there is evidence, sufficiency or otherwise of the said evidence, cannot be gone into by this court. Under these circumstances, he submits that the order of the Tribunal cannot be said to suffer from any illegality.

5. The following is the charge framed against the petitioner:

> "The said Sri N.Appa Rao, Head Warder, District Jail, Nellore while working as Head Warder in Sub-Jail, Grade-II, chittoor developed illegal close intimacy and connections with the escape docit prisoners by exhibiting gross negligence, misconduct and dereliction of duty by not performing legitimate duties as laid down in A. P. Prison rules, 1979. Due to his (Sri N.Appa Rao) conspiracy and connivance (10) Remand Prisoners escaped from sub-jail, Grade-II chittoor on 17.09.2000".

6. To sustain the charge, six persons were examined, apart from the convicts. The charges of conspiracy and connivance cannot be said to be proved, inasmuch as the petitioner was not at all present on the date of incident and, therefore, he cannot be said to be even remotely connected with the incident, which took place on 17.9.2000. It is a case of no evidence at all, so far as the petitioner is concerned. Further to establish the role of the petitioner, no evidence is forthcoming, except stating that he has close relation with the ten escaped prisoners and he used to take them out for work, even though he was directed not to do so. However, these incidents cannot be taken as grounds to hold that he connived with the

convicts, to enable them to escape from the prison. At the most, he can be charged for the unauthorized absence from 15.9.2000 and for leaving the headquarters without permission. But under no circumstances, it can be said that he has connived with the prisoners. Thus we find that there is total non-application of mind and it is case of no evidence. It is also held in catena of decisions of Supreme Court that normally this court shall not interfere in the domestic enquiry proceedings, but if it is found that the finding of the enquiry officer is perverse or based on no evidence and that the punishment is shockingly disproportionate to the misconduct, then it is open for this court to interfere in exceptional cases. The facts of this case will clearly reveal that it falls within the exceptional category, inasmuch as there is no evidence with regard to the alleged misconduct, except the misconduct of unauthorized absence. The Tribunal did not consider these aspects and observed that the petitioner who belongs to a disciplined force and is entrusted with hardcore criminals is not expected to behave in a friendly manner with prisoners and facilitate their escape from the prison. This observation of the Tribunal is based on no material at all. Neither the departmental witnesses nor the prisoners, who were examined, stated that the petitioner facilitated the escape of remand prisoners. In such an event, we find that the order of dismissal is not sustainable in law. Accordingly, we set aside the order of Tribunal and also the order of dismissal dated 27.1.2003, as confirmed by the appellate authority.

7. But at the same time, it cannot be said that the petitioner did not commit any misconduct. Admittedly he left the headquarters without permission and without sanction of leave. Under these circumstances, he cannot escape the punishment for such

misconduct. Instead of sending back the matter to the authorities, in view of the long lapse of time, we find it appropriate to impose the punishment in the interest of justice.

8 . Accordingly the petitioner shall suffer deferment of annual increments for a period of three years and he is entitled for notional fixation. Petitioner shall be reinstated forthwith and he shall be entitled for notional fixation of pay in accordance with rules.

9. With the above modification, the writ petition is allowed. No costs.

G.BIKSHAPATHY,J

P.S.NARAYANA,J

AVS/KM

DATE:26.04.2005

..... REGISTRAR

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SECTION OFFICER

To

1 The Inspector General of Prisons and Correctional Services

AP, Hyderabad.
2 The Dy.Inspector General of Prisons Rayalaseema Region,

Kadapa Kadapa District.
3 The Government of A.P.rep by its Prl.Secy, Home

Department, Secretariat, Hyderabad.

4. 2 CCs to G.P. for Services – I, A.P. High Court Buildings (OUT)

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